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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Letter dated 5 March 2002 from the Permanent Representative of Germany to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to enclose herewith the report of the International Commission of Jurists round table on the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), held in Geneva on 30 November 2001.

The purpose of this conference was to provide a forum for the exchange of views between State representatives, organizations and experts in the field of economic, social and cultural rights on a wide range of issues pertaining to the ICESCR and to a possible draft optional protocol.

I am of the opinion that the report of this conference contains a number of very valuable ideas and is likely to make an important contribution to the ongoing debate on this matter.

I would therefore be most grateful if you could have this report* distributed as a document of the fifty-eighth session of the Commission on Human Rights, under item 10 of the agenda.

(Signed): Walter LEWALTER
Ambassador
Permanent Representative

* Reproduced as received, in English only.

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INTERNATIONAL COMMISSION OF JURISTS
Commission internationale de juristes - Comisión Internacional de Juristas
" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

Report of the Roundtable on the Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Hosted by the International Commission of Jurists

30 November 2001

Geneva, Switzerland.

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INTRODUCTION

On November 30, 2001, the International Commission of Jurists convened a roundtable on the draft Optional Protocol, (hereinafter draft OP), to *the International Covenant on Economic, Social and Cultural Rights*, (hereinafter ICESCR or the *Covenant*). The purpose of this conference was to provide a forum for the free exchange of views between State representatives, organisations and experts in the field of economic, social and cultural rights, (hereinafter ESC rights), on a wide range of ICESCR and draft OP issues. To this end, participants were advised that, apart from expert submissions, all discussions would be reported on a non-attributable basis.

Introductory remarks by Hatem Kotrane, Faculté des Sciences juridiques, politique et sociales de Tunis and independent expert appointed by the Commission on Human Rights to examine and submit a report evaluating the draft OP.

Professor Kotrane posed five questions to govern the roundtable discussions, the answers of which he considered integral to the writing of his report:

I. Who would be entitled to utilise the proposed OP complaints/communications procedure?

II. What organ would be competent to assess complaints under the proposed OP system;

III. Which *Covenant* rights would constitute the foundations for the proposed complaints/communication procedure?

IV. Against whom would the proposed complaints/communication procedure be engaged?

V. Under the proposed OP complaints/communications procedure, what remedial actions could be taken to counteract the violation of *Covenant* based ESC rights?

1. *COVENANT* RIGHTS: PRECISION AND CLARITY

1.1. ***Introductory presentation to Part I of the roundtable by Professor Eibe Riedel***, member of the United Nations Committee on Economic Social and Cultural Rights, Office of the High Commissioner for Human Rights.

Professor Riedel commenced his introduction with an overview of the restrictive interpretations and misconceptions associated with ESC rights.

(i) The ICESCR vs. the ICCPR: Vagueness

Professor Riedel reviewed the contention that whereas ICCPR rights seem precise, explicit and self evident, those found within the ICESCR, by their very nature, seem vague and less precise, eliciting only programmatic norms of intent as opposed to directly binding legal obligations. In his view, all human rights treaty text formulations, including the ICCPR, are open and vague,

this being linked to the human rights philosophy of formulating texts in the abstract to allow for future/unforeseen applications. In practice, this level of abstraction has been mitigated by decades of international human rights practice, governing treaty body jurisprudence and general comments that assist in elucidating the full meaning of various treaty provisions.

Critics assert that the vague nature of ICESCR rights is demonstrated by the fact that the five other United Nations treaty bodies, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Human Rights Committee, currently possess complaints procedures while the Committee on Economic, Social and Cultural Rights, (hereinafter the Committee), is merely a creation of ECOSOC and has not been endowed with its own complaints procedure. In response, Professor Riedel pointed out that the fact that the ICESCR left it to ECOSOC to formulate rules for Committee establishment and governance does not demonstrate ICESCR vagueness and its unequal treatment when compared with civil and political rights.[1]

(ii) The ICESCR Text: Non Self-Executing Norms

A frequently voiced argument theorises that the ICESCR textual discourse supports the view that while ICCPR rights, in the operative third part, are phrased in such a way that accords individuals immediate claim rights/entitlements, *Covenant* rights are phrased in much more cautions language[2] reducing the meaning of *Covenant* rights to a series of non-self-executing norms of purely programmatic content. Professor Riedel asserted that this argument is flawed as, read carefully, the ICCPR reveals similar formulations of mere state obligations in articles 3, 6(2), 6(3), 10(3), 14(4), 18(4), 21, 22, 23(1) and 23(4). Further, Committee jurisprudence has consistently interpreted the substantive provisions of the ICESCR in such a way that every right from articles 2(2), 3 and articles 6 through 15 contain at least some elements of obligations to respect, protect and fulfil which lend themselves to direct applicability, similar to ICCPR rights.

(iii) ICESCR and ICCPR Development: Political Influences

Critics of an OP to the ICESCR frequently argue that the *Covenant's* drafting history supports a discriminatory view of ESC rights as compared with their civil and political rights counterparts. Professor Riedel analysed this contention through the political influences surrounding the ICESCR and ICCPR throughout their development. Here, it was revealed that despite the 1948 Universal Declaration on Human Rights pledge regarding the universality and indivisibility of all human rights, this unity was disrupted in 1954 as mirroring the ideological cleavage between East and West. While Western States favoured directly enforceable civil and political rights, planned economy Eastern States favoured economic and social rights as more in line with their collectivist visions. Further differing from Western conceptions, Eastern States regarded civil, political, economic social and cultural rights as non self-executing obligations to be integrated into Soviet Bloc legal systems according to the relevance accorded to them in the socialist context, i.e. subject to socialist legality and the primacy of policy considerations over legal propositions. With the demise of the Soviet Bloc, the aforementioned East-West ideological cleavage became redundant and speculation abounded that as former Socialist States accepted

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[1] In any event, through resolution, ECOSOC ensured that, in practice, the Committee follows the model established by other treaty bodies in relation to State reporting thus making the Committee a treaty body in all but name.

[2] for example, "the parties recognise the right", or "undertake to ensure" or simply "recognise".

the full and direct binding nature of civil and political rights, Western States would reassess their critical stance toward ESC rights and accept the direct applicability of either some ESC rights components or a limited number of core ESC rights on the same footing as civil and political rights. Unfortunately, civil, political, economic, social and cultural rights unity did not materialise, the vacated East-West ideological trenches were replaced with new ideological cleavages based on the North-South divide which developed during the mid-1970's with the propagation of new world orders, solidarity, development concepts and poverty reduction schemes. Within this context, Western States shifted their ideological defences against ESC rights direct applicability and the binding nature of ICESCR norms in order to avoid potential developing nation claims for access to resources, fairer terms of trade and economic and technical international assistance/co-operation under ICESCR article 2(1).

(iv) ICESCR OP: Developing Nation Hesitations

Another point of criticism against an OP to the ICESCR emanated from developing nations that either explicitly or implicitly voiced opposition rooted in the fear that a directly applicable fully binding ICESCR could lead to a human rights imbalance wherein developing nations would be singled out for non-fulfilment of ESC rights criticism due to their financial inability to guarantee the full realisation of *Covenant* rights.

In response, Professor Riedel pointed out that the ICESCR concerns itself with the basic satisfaction of certain individual/group core rights that are well within the means of developing nations to satisfy. Coupling State discretion with the international communities' obligation to provide technical assistance and co-operation in the "progressive realisation" of ESC rights means that developing nations would not be lead into a human rights imbalance wherein they would be singled out for the non-fulfilment of ESC rights.

(v) *Covenant* Rights: The Committee's Position on Direct Applicability

In conclusion, Professor Riedel advised that the Committee has consistently held the view that a comprehensive approach should be adopted towards the ICESCR whereby all *Covenant* rights would be capable of direct applicability with possibilities for collective rights guarantees coupled with other obligations addressed to States Parties as non-self executing obligations.

1.2. ROUNDTABLE DISCUSSION ON ESC RIGHTS

(i) ESC Rights: Justiciability

Roundtable participants considered the issue of ESC right justiciability and several pointed out that the domestic jurisprudence of numerous nations including South Africa, Canada, France, and India has demonstrated the increasing acceptance of the ESC rights justiciability on the national level, an acceptance that has extended into the international arena through the collective complaints mechanism built into the Optional Protocol to the European Social Charter. Professor Riedel supported the notion that, under the draft OP, justiciability would relate to the respect, protect and part of the fulfil typology developed by the Committee for the realisation of ESC rights. The aforementioned fulfilment obligation is subdivided into the obligation promote/inform and the obligation to provide. The obligations to respect, protect and the promote/inform subdivision of the fulfilment obligation are clear cut, would not involve a weighing of State resource allocation prioritisations and would be readily justiciable within the draft OP context.

(ii) *Covenant* Rights: Interpretative Mechanisms

The concern was raised as to whether *Covenant* rights and obligations were sufficiently clear/precise with reference to the variable content of article 2 and the parasitic nature of articles 1 through 5 as applied to the rights and obligations contained in ICESCR articles 6 through 15. The view was expressed that the interpretative issues raised through the said configuration made it difficult to define, as a matter of objective standards, where States Parties obligations would lie under the ICESCR, how States would comply with *Covenant* obligations at any particular time and how it would be possible to objectively compare the extent to which States Parties were fulfilling their ICESCR obligations.

In reply, one roundtable participant advised that whenever treaty systems of international petitions, communications and/or remedies are introduced, it is not always certain how the treaty body interpreting the instrument is going to decide a particular case or interpret specific aspects of the text in question. With regard to the OP to the ICESCR, some participants suggested that future jurisprudence would clarify numerous issue areas and norms as was the case when the Human Rights Committee adjudicated ICCPR rights and obligations. For the present, the Committee has adopted quite a number of General Comments[3] that have clarified ICESCR subject areas such as health, housing and social security. Beyond that, ICESCR rights and obligations can be clarified through: ILO practice/standards; other international practice/standards in particular areas; and commonly agreed to national standards.[4]

(iii) ICESCR Article 2(1): Progressive Realisation and ICESCR OP Effect on State Prioritisations

In response to questions regarding the "fulfil" aspect of the ICESCR article 2(1) "progressive realisation", Professor Riedel was of the view that this concept meant that countries who start from a relatively low level on the development scale will have to comply with a lower degree of ESC rights realisation than developed nations as the *Covenant* only requires what is possible under the "minimum core" doctrine. The Committee has clarified that there is a "minimum core obligation" incumbent on each state to ensure the satisfaction of, at the very least, minimum essential levels for each *Covenant* right. Such obligations were formulated to not be unnecessarily onerous especially if developed nations provide co-operation and technical assistance under *Covenant* articles 2(1), 22 and 23. With reference to the chart, below, it was noted that the respect and protect obligations and the promote/inform subdivision of the fulfilment obligation would not involve positive economic commitments from states.

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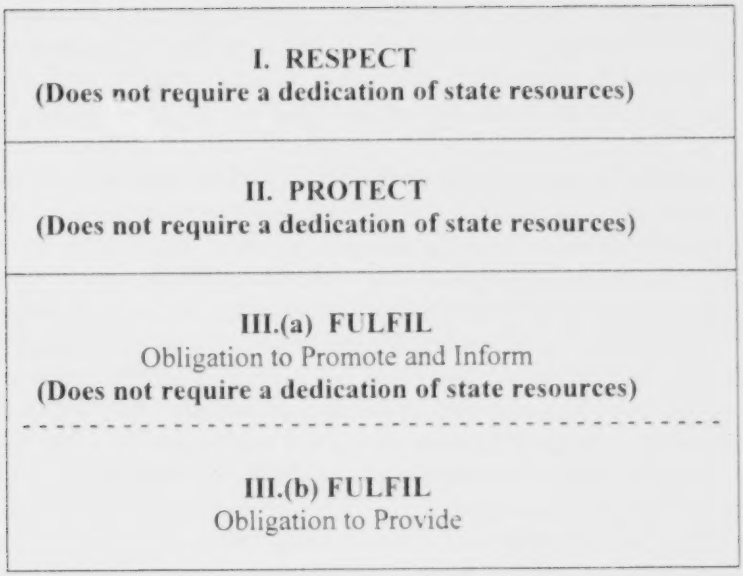
[3] With regard to the formulation of ICESCR General Comments, Professor Riedel pointed out that the Committee engages in extensive discussions with States Parties and specialised agencies most closely involved with particular *Covenant* articles before a General Comment is written and that this work will continue. Further, the Committee remains dedicated to ESC rights and obligations clarification however, the international community should not wait for the Committee to comment on the whole of the *Covenant* before proceeding with an OP to the ICESCR as it is now time for States Parties to move the process forward.

[4] By way of support for the aforementioned through comparison, Professor Harris added that the rights under the European Convention on Human Rights were originally rather vague however, the European Court of Human Rights set itself on the substantive clarification of same.


I. RESPECT
(Does not require a dedication of state resources)
II. PROTECT
(Does not require a dedication of state resources)
III.(a) FULFIL
Obligation to Promote and Inform
(Does not require a dedication of state resources)
III.(b) FULFIL
Obligation to Provide

The floor opened to a question concerning the possibility that the ICESCR OP complaints procedure coupled with the "immediate application" provision of article 2(1), could be used to question national public policy prioritisations. In response, Professor Riedel advised that the international human rights system employed three approaches in rectifying potential/actual human rights violations: political; quasi-judicial; and judicial. Under the ICESCR, the Committee is concerned with the provision of quasi-judicial remedies, however, this procedure is not judgment oriented, it is an extension of the political process highlighting constructive dialogue. Here, complaints concerning public policy would not lend themselves to the draft OP remedial procedure as this is the classic area of the State reporting system that builds a constructive and co-operative dialogue between States Parties and Committee members. Within this process, the Committee only urges that *Covenant* rights and obligations be utilised as checklists in deciding national priorities. Professor Harris added that it is not the function of the Committee to stand in the shoes of the State prognosticating on the appropriateness of national resource allocation as the Committee only focuses on irrational state policies that no reasonable political actor would condone. Here, while the Committee would want to offer a wide margin of appreciation, there would be flagrant cases, e.g. where there is State inaction in a particular regard or where the State is acting in a clearly discriminatory fashion. In such cases, the Committee could properly and confidently step in to offer remedial suggestions.

(iv) ICESCR OP Effect on Self Determination

ICESCR article 1 sets forth the principle of "all peoples... right of self-determination." A tabled question concerned whether an ICESCR OP complaint could be validated regarding the enjoyment of the aforesaid right thereby politicising the role of the Committee. In response, it was pointed out that ICCPR article 1 was identical to the ESCR *Covenant* article in question. Under the ICCPR article, the Human Rights Committee decided that there is no right of petition under it's Optional Protocol because that article concerns a right of peoples whereas the Optional Protocol to the ICCPR concerns individuals. Professor Riedel was of the view that the same reasoning would be applied to a complaint lodged under ICESCR article 1 despite the fact that the Committee has previously acknowledged the possibility that ESC dimensions to the right of self determination could be the subject of a petitions procedure. Here, it is possible that a

Working Group could specify that there would be no right of petition with regard to a peoples' right of self-determination.

(v) ICESCR OP Inquiry Procedure

One roundtable participant requested clarification on the substantive content of the inquiry procedure that the Committee, if appointed as the treaty monitoring body under the ICESCR OP, would use to investigate State failings concerning the "provide" subdivision of the obligation to fulfil. In response, it was recalled that, in the Committee's opinion, ICESCR rights have attendant obligations to respect protect and fulfil, with fulfilment being subdivided into an obligation to "provide" substantive right realisation and an obligation to "promote or inform".[5] With regard to investigations of States Parties fulfilment obligations to provide, Professor Riedel recommended an inquiry procedure similar to the one developed under the CEDAW Optional Protocol. Here, State obligations to provide would not be the subject of an individual/group ICESCR OP complaints procedure as, due to difficulties in the assessment of claims, it would not be politically appropriate to have individuals claiming against States for failing to provide. Within this context, States and the Committee could engage in constructive dialogue aimed at furthering the process while not directly questioning States Parties allocation of resources.

2. ICESCR BREACH: REMEDIAL FRAMEWORK

2.1. ***Introductory presentation to Part II of the roundtable by Professor David Harris***, University of Nottingham Faculty of Law in the United Kingdom.

Professor Harris commenced his introduction with an overview of numerous issues relating to possible remedies under an OP to the ICESCR.

(i) *Covenant* Rights Subject to an OP Complaints Procedure

Professor Harris adopted the Committee's opinion that an ICESCR OP complaint should be capable of being brought in respect of any *Covenant* right, with the exception of the article 1 self determination right as this is a would present certain political difficulties, discussed *supra* in s. I.(i). Articles 2 - 5 enunciate general governing principles and are therefore separate from articles 6 - 15 that feature substantive rights guarantees. The difference between the two sets of rights means that the former are not sufficient in and of themselves to form the basis of an ICESCR OP complaint as they have to be connected with one of the substantive article 6 to 15 rights in order to be activated.

Professor Harris acknowledged that given limited State resources available for the satisfaction of ICESCR obligations, as a general rights restriction, the OP complaints procedure should not be able to augment substantive *Covenant* rights realisation for so called expensive rights such as the right to health, social security, education etc.. Here, however, it was emphasised that there are other less intrusive aspects within the obligations to respect, protect and fulfil that are of some considerable impact and can lead to successful individual communications. See *supra* at s. I.(j).

With regard to ICESCR article 2(1) concerning international co-operation and assistance, Professor Harris was of the opinion that this obligation should not be operable through an

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[5] e.g. informing about HIV/AIDS programs and health hazards concerned with the disease while not providing medications.

individual complaints procedure as it would more properly operate through Committee communications within the State reporting context. To illustrate this point Professor Harris cited the obvious attendant difficulties on an individual in a village lacking in basic sanitation/safe water in bringing an ICESCR OP complaint alleging a lack of international co-operation.

(ii) Against Whom Should ICESCR OP Complaints Be Brought

Professor Harris asserted that ICESCR OP complaints must be launched against the States Parties to the *Covenant* as they are the only obligation holders under this international instrument. With regard to potential complaints against trans-national corporations and other non-state actors, Professor Harris indicated that while these entities cannot be made directly liable as they are not *Covenant* signatories, positive obligations exist on States in respect of all non-state actors either wholly or partially within their jurisdiction.

(iii) Possible ICESCR OP Remedies

As a general point Professor Harris mentioned that Article 8 of the draft OP states that the Committee[6] may recommend that State Parties take specific measures to remedy substantiated violations. Article 8 is thus quite precise as while the Committee "may" recommend remedial state actions, such recommendations are not mandatory.

Remedial possibilities under the ICESCR OP would include:

(**a**) *declaratory pronouncements.* If one looks to the practice of bodies such as the European Social Charter Committee, the European Committee for Social Rights and/or the ILO Freedom of Association Committee, these bodies answer successful complaints by way of declaratory pronouncements which are left to the discretion of individual States to redress. The Human Rights Committee employs a standard formula calling upon ICCPR offending States to take effective and enforceable remedial action which must be communicated to the Human Rights Committee within a certain time period, typically 90 days. Occasionally the Human Rights Committee recommends the type of action to be taken as envisaged under the ICESCR OP, (as here specific remedial measures for ICPPR violations may be recommended).

(**b**) *compensation.* One remedy that may be considered under an ICESCR OP is the recommendation that the State pay victim(s) compensation as validated through the practice of the Human Rights Committee, the Committee Concerned with the Elimination of Racial Discrimination and the ILO Freedom of Association Committee that have occasionally recommended that State compensation be paid to specific victims.

(**c**) *the enactment or enforcement of legislation.* There will be situations where the Committee will be asked to make recommendations with regard to individual State social policies to do with, for example, education, housing, social security or healthcare. Here, the Committee might recommend States to enact or enforce legislation that, in very general terms, meets *Covenant* requirements. There is, however, a question as to how far Committee recommendations can go where they concern the allocation of finite State resources. In making such recommendations the Committee would be following the practice of the Human Rights Committee and the European Social Charter Committee that advocated similar remedial actions.

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[6] For the purposes of this section it is assumed that the Committee will be the ICESCR monitoring body under the OP.

Further, the Committee could make remedial recommendations with regard to bringing State administrative practices more in line with ICESCR obligations.

(**d**) *a public law judicial review approach.* Where OP complaints concern *Covenant* rights fulfilment obligations that involve large scale amounts of money, the Committee cannot easily or comfortably investigate situations and advise States how to allocate their resources. This said, a public law judicial review approach could be adopted to look into the impugned area to determine whether the State has a policy at all and if so, whether it is reasonable. Further, the Committee could examine the State policy to determine if it is fundamentally flawed on a point of substance. On the national level, the aforementioned process was utilised by the South African Constitutional Court in *Government of the Republic of South Africa* v. *Grootboom.* Here, through an examination of South African housing policy, the Court found that no provision had been directed at ameliorating the conditions faced by individuals in desperate need of basic housing. Flawed in a substantive regard, the housing policy was held to be unreasonable. Within the context of the right of access to housing, the Court held that State policy, in order to be reasonable, had to take account of the different socio-economic levels of the South African population and could not ignore those whose needs were most urgent.

(**e**) *an examination of regressive State financial measures.* The Committee could examine State regressive financial measures as they impact upon ESC rights domestic policies and comment on whether there was justification for the cutbacks.

(**f**) *remedial actions.* There are numerous remedial actions that the Committee might avail itself of as seen through other international remedial mechanisms. For example the ILO Freedom of Association Committee, in confronting the situation of the unjustified detention of trade union representatives, recommended their release.

(**g**) *friendly settlement.* There could be OP remedial provisions concerning "friendly settlement" procedures. A friendly settlement procedure is used very successfully and with increasingly frequency by the European Court of Human Rights which avoids the need for a final decision on a complaint merits by the way of a recommendation.

2.2. ROUNDTABLE DISCUSSION ON ICESCR BREACH: FRAMEWORK AND POSSIBLE REMEDIES

(i) ICESCR OP Complaints: Standing

The issue was raised as to who would have standing to bring complaints under the ICESCR OP. In response, the view was expressed that, at a minimum, individual and group victims of State *Covenant* violations would possess this right. With regard to claims being brought by NGO's on behalf of groups or individuals, Professor Riedel advised that most members of the Committee believed that *locus standi* questions should be interpreted widely with the underlying restriction that there had to be a specific victim, otherwise several complaints by NGO's and other bodies of civil society could risk Committee politicisation.

(ii) ICESCR OP Complaints: Timing

Article 3(3)(a) of the draft OP provides that a complaint cannot be brought before the Committee until all domestic remedies have been exhausted. In response to a question requesting clarification on this issue, a participant indicated that the "exhaustion of all domestic remedies"

provision is standard in respect of international claims/communications procedures. Following the practice of the Human Rights Committee and the Inter-American Commission, complainants must proceed through national legal systems and avail themselves of domestic remedies before an international complaint is launched unless the provision of domestic remedies are mired in excessive delay. Where there is clearly an unreasonable delay, an ICESCR OP complainant could proceed.

(iii) ICESCR Article 2(1): International Co-operation and Assistance

One conference participant questioned the meaning of ICESCR article 2(1) "international assistance and co-operation" and whether a complaint could be brought against a State for not providing this to augment the substantive realisation of *Covenant* rights. Another roundtable participant expressed the view that the envisioned OP complaints procedure would be between state and individual/group victims. Within this dynamic, the international co-operation and assistance dimension/obligation would have nothing to do with the state/victim dichotomy and thus could not be linked to the ICESCR OP complaints process. Professor Harris advised that one should read the ICESCR article 2(1) obligation of progressive realisation as an obligation of the State Party trying to fulfil the obligation rather than as an obligation of other States to assist. It would be unhelpful to the discussions of the OP to allow it to take on a character of somehow being a State to State issue on whether there had been international assistance or not. The obligation has to be perceived as one of States Parties taking steps to achieve the realisation of the *Covenant* rights and one method under which ICESCR rights may be realised is through collective assistance and co-operation. There should not be a justiciable obligation on other States to provide specific assistance, however, the lack of means, including the lack of assistance, could be used to indicate why certain measures could not be undertaken.

Whereas one participant thought it would be difficult to identify that a particular State had infringed its international co-operation/assistance obligation towards an individual of another State, another roundtable participant was of the opinion that a complaint concerning international co-operation/assistance could be launched against all States Parties to the *Convention* with the adjudicating body competent to decide what countries the complaint should apply to.

Another participant thought that the ICESCR OP complaints procedure could have a role where a nation was at fault for not properly using resources obtained from a non-domestic source for a particular purpose. If international assistance was not used for the provided purpose, this might be one of the exceptional circumstances in which a Committee public law judicial review type of action might be appropriate.

3. THE ESTABLISHMENT OF AN INTER-SESSIONAL OPEN-ENDED WORKING GROUP ON THE OPTIONAL PROTOCOL PRESENTATION

3.1. *Introductory remarks to Part III of the roundtable by Professor David Harris*.

Professor Harris commenced his introduction with the assessment that States have some reluctance to establish an international ESC rights realisation mechanism that could possibly be used against them. This said, an ICESCR OP working group should be established as it would send an unfavourable message to the world community if States are not prepared to seriously consider establishing a right of communication in respect of ESC rights.

In Professor Harris's opinion, a working group would review the independent experts' report to the Commission of Human Rights and would debate various fundamental issues in an attempt to arrive at State consensus with regard to an OP. Further, the working group would have a wide latitude to reshape the body that investigates ICESCR complaints and could recommend that the Committee or another body be empowered to hear *Covenant* complaints. Within this, another option to consider is that a number of responsibilities could be delegated to specialised agencies that have competence in particular subject areas. Finally, it was stressed that, in engaging a working group, States not in favour of an ICESCR OP outcome would not prevent States that are in favour from at least presenting their views and having the matter debated in a way which does proper justice to a fundamental human rights notion in our society.

3.2. ROUNDTABLE DISCUSSION ON THE ESTABLISHMENT OF AN ICESCR OP WORKING GROUP

(i) ICESCR OP Preparatory Work

One roundtable participant stressed the importance of the independent expert's work as substantive input during this preparatory stage will prove indispensable in laying the groundwork to assist in addressing larger conceptual issues within a working group. Against this backdrop, another participant stressed that States should be given time to both evaluate and respond to Mr. Kotrane's report to the Human Rights Commission and that therefore, a working group should not be established at this time. This opinion led to another comment advising that, as many ICESCR and draft OP questions remain unanswered, preparatory efforts should be furthered in order to ensure that a working group does not start reinventing the wheel. Within this process, it would not be incompatible to combine the work of the independent expert and the establishment of the working group. Here, the independent expert could be entrusted with a two or three year mandate to continue studying the ICESCR and draft OP to formally present his findings at an all States Parties meeting.

(ii) ICESCR OP Working Group

The great majority of roundtable participants voiced support for proceeding to a working group to examine draft OP and ICESCR issues. One participant indicated that although numerous questions remain, the time has come to engage a working group in order that State and civil society representatives may discuss fundamental questions and issues with regard to their legal and political ramifications. Another participant was of the opinion that the most effective way to prompt States Parties to think about draft OP and ICESCR issues is to sit them around a table to negotiate a text. Here, a working group would translate into concrete terms the proposals, theoretical discussions and difficulties concerning this proposed international instrument. In dissent, one participant felt that further understanding of the actual legal interpretation of ESC rights would be necessary before one could comfortably convene a working group to draft the Optional Protocol.

Roundtable participants discussed various options with regard to the framework within which an ICESCR and draft OP working group could press forward. These options included a group that could:

a) meet two or three times per year to discuss various draft OP and ICESCR questions/issues, providing substantive contributions to the creation of an OP without necessarily drafting it;

b) immediately negotiate an OP;

c) review all options available, continue conceptual discussions , (the clarification of obligations and definitions etc.), and at a later stage negotiate an OP.

Finally, one participant acknowledged that as some States are not ready to proceed towards an OP while others are most keen on this issue, the debate should be governed by both respect and understanding and a working group would be a proper forum for every State to share its views and enrich the process.

CONCLUSION

Professor Kotrane concluded the roundtable conference by advising that he gathered valuable impressions and views which will assist him in drafting the report that will be submitted to the Commission of Human Rights at its next session in March 2002. Here, Mr. Kotrane obtained a clearer understanding of the numerous issues surrounding the ICESCR and draft OP and this will serve to move the process forward. In this, the purpose of this conference, to provide a forum for the free exchange of views between State representatives, organisations and experts was satisfied.

APPENDIX "A"

Roundtable on the Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Centre de Conférences de Varembé
Rue de Varembé 9-11, Room B,
Geneva, Switzerland

30 November 2001
9h30 to 17h30

AGENDA

Morning Session

Chair: Louise Doswald-Beck, Secretary General, ICJ

9:30 - 10:00 **OPENING OF THE MEETING AND INTRODUCTORY REMARKS**

Professor Hatem Kotrane, UN Independent Expert on the Draft Optional Protocol to the ICESCR

Louise Doswald-Beck, Secretary General, ICJ

10:00-11:15 **ARE THE RIGHTS IN THE COVENANT SUFFICIENTLY PRECISE TO BE THE OBJECT OF A COMPLAINTS PROCEDURE AND TO EVALUATE STATE DISCRETION IN IMPLEMENTATION?**

Introductory remarks by Professor Eibe Riedel, Member of the United Nations Committee on Economic Social and Cultural Rights, Office of the High Commissioner for Human Rights - Professor, Faculty of Law, University of Mannheim, Germany

Roundtable Discussion

11:15-11:30 ***Coffee Break***

11:30-12:15 **Continuation of Roundtable Discussion**

12:15-14:00 ***Lunch Break***

Afternoon Session

Chair: Louise Doswald-Beck, Secretary General, ICJ

14:00-16:00 **WHAT REMEDIES SHOULD THE COMPLAINTS PROCEDURE UTILIZE ?**

Introductory remarks by Professor David Harris, Faculty of Law, University of Nottingham, United Kingdom

Roundtable Discussion

16:00-16:15 ***Coffee break***

16:15-17:15 **IS IT TIME FOR THE ESTABLISHMENT OF AN INTER-SESSIONAL OPEN-ENDED WORKING GROUP ON THE DRAFT OPTIONAL PROTOCOL?**

Introductory remarks by Professor David Harris, Faculty of Law, University of Nottingham, United Kingdom

Roundtable Discussion

17.15-17.30 **FINAL REMARKS AND CLOSE OF MEETING**

Professor Hatem Kotrane, UN Independent Expert on the Draft Optional Protocol to the ICESCR

Louise Doswald-Beck, Secretary General, ICJ

APPENDIX "B"

Background and Objectives of the Roundtable on the Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Centre de Conférences de Varembé
Rue de Varembé 9-11, Room B,
Geneva, Switzerland

30 November 2001
9h30 to 17h30

Roundtable on the Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Background

Commencing in 1990, the question of adopting an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights came under increasing consideration by the international community. Indeed, such an instrument has long been advocated as a means to ensure that on the international level, persons have access to remedial mechanisms in addressing violations against their most basic economic, social and cultural rights. Proponents have pointed out that adoption of an Optional Protocol would permit jurisprudential innovations contributing to an illumination of the normative implications and operational requirements of economic, social and cultural rights. Noting this potential, Mary Robinson, the United Nations High Commissioner for Human Rights, urged the early adoption of such an Optional Protocol and, in the follow-up to the World Summit for Social Development advised that this mechanism would be an invaluable tool for the augmention of economic and social development.

In December of 1996, a Draft Optional Protocol was prepared by the Committee on Economic, Social and Cultural Rights for consideration by the United Nations Commission on Human Rights, (E/CN.4/1997/105). Through its review the Commission made a number of suggestions regarding the draft provisions and both welcomed and called on states for further discussions and commentaries.

In February 1999, the International Commission of Jurists, (ICJ), in cooperation with the Office of the High Commissioner for Human Rights, (OHCHR), organised a workshop in support of a further elaboration to the Draft Optional Protocol. Here, a fruitful discussion occurred amongst 61 State and 11 non-governmental organization representatives with several issues being highlighted for further study and clarification.

During its 56th session, the Commission on Human Rights decided to examine the question of the Draft Optional Protocol through Resolution E/CN.4/2000/9. Here, the High Commissioner was encouraged to strengthen the research and analytical capacities of her office in the field of economic, social and cultural rights and to share her expertise, *inter alia* , through the holding of expert meetings. Subsequently, on 17 August 2000, at its 52nd session, the Sub-Commission on the Promotion and Protection of Human Rights unanimously adopted Resolution (2000/9) (E/CN.4/sub.2/2000/L.11/add.1), requesting that the High Commissioner for Human Rights organise an expert meeting to discuss the Draft Optional Protocol and submit a report summarising the activities of the said meeting to the Commission on Human Rights at its 2001 57th session.

On February 5th and 6th, 2001 the meeting recommended by the Sub-Commission on the Promotion and Protection of Human Rights was held in Geneva where the justiciability of economic, social and cultural rights, with particular reference to the Draft Optional Protocol, was considered. This meeting, in workshop format, was organized by the OHCHR in cooperation with the ICJ. Considering justiciability on the domestic level through case studies covering Mauritius, Colombia, South Africa, Canada, France, and India, the experts demonstrated that economic, social and cultural rights are currently being adjudicated in domestic legal systems throughout the world. It was also pointed out that numerous precedents exist for the international consideration of complaints concerning the violation of economic, social and

cultural rights. Here, the 1995 Additional Protocol to the European Social Charter, the 2000 San Salvador Protocol, the African Charter on Human and Peoples' Rights and the new Optional Protocol to CEDAW served as examples.

A majority of the OHCHR/ICJ workshop participants and experts favoured the view that progress in achieving the adoption of the Draft Optional Protocol is best secured through an inter-sessional open-ended working group of the Commission on Human Rights within which States can debate areas of concern. Here, the high level of government participation in the workshop, 91 representatives from 74 governments, highlighted the international interest in the Draft Optional Protocol and its potential ramifications.

Subsequent to the OHCHR/ICJ workshop, the Commission on Human Rights, through Resolution 2001/30, (E/CN.4/2001/L.11/Add.1), decided to appoint an independent expert to examine the question of the Draft Optional Protocol in light of: the text contained in the annex to document E/CN.4/1997/105; State, intergovernmental organisation and non-governmental organisation comments; and the report of the aforementioned workshop. The appointed expert, Hatem Kotrane, a professor and director of the department of private law at the Faculty of Juridical, Political and Social Sciences, University of Tunis, was requested to submit a report to the Commission at its 58th session with a view to its consideration of possible follow-up and future actions, including the establishment of an open-ended working group of the Commission to examine the question of a Draft Optional Protocol to the ICESCR.

Objectives of the Roundtable

The Roundtable will provide for an open and informal forum, as facilitated by experts, in which States, non-governmental and intergovernmental organizations may engage in a critical exchange directed at working through relevant issues. A provisional agenda is attached.

Organizational Contacts

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APPENDIX "C"

The Draft Optional Protocol to the Intentional Covenant on Economic, Social and Cultural Rights ICESCR: Arguments Favouring Adoption

I. The Promotion of Economic Stability Through the Recognition of ESC Rights

The draft Optional Protocol to the International *Covenant* on Economic Social and Cultural Rights, (hereinafter draft OP), proceeds from the view that the enhancement of human rights is necessary for the simultaneous promotion of domestic and international economic development. Traditionally, economists have argued that governments should allocate goods and services, so-called public goods, characterized by non-rival consumption or positive externalities, that the market could not. Education, environmental protection, the provision of information and safety and security are examples of these public goods whose absence characterizes impoverishment. Indeed, serious economic social and cultural deprivations have been proven throughout history to be significant economic and political destabilizing factors for concerned states. Within this context, development may be viewed as being dependent on economic and social policies that are conducive to the well-being of the population so as to address both market and government failures. The advancement of economic, social and cultural rights, (hereinafter ESC rights), through the draft OP would add to the more widespread attainment of public goods and would thus further economic stability. This approach focuses on problems such as the lack of human dignity and freedom which, if denied, lead to social and economic upheavals.

II. Justiciability

There is a widespread tendency to deem ESC rights as something "other" than civil and political rights as only the latter are perceived as justiciable. Posited as national and or international policy aspirations, ESC rights are thus said to fall below the justiciable threshold for individual legal enforcement. Counter-arguments to the aforementioned theorise that as the ICESCR and the ICCPR are both legally binding human rights instruments of equal power, ESC rights should be positioned on an equal footing with civil and political rights in terms of their justiciability. Here, as has been stressed time and again through numerous United Nations resolutions and pronouncements, if human rights are indeed indivisible, interrelated and interdependent, there is no substantive reason why the monitoring procedures under the ICESCR and the ICCPR should be different. Further, human rights do not derive stature from their justiciability and as such, although the absence of international remedies for ESC rights violations may weaken the full enjoyment of same, this does not derogate from their inherent quality as human rights proper.

That, relative to civil and political rights, ESC rights are less internationally justiciable may be explained through ideologically motivated political and economic arguments that historically contributed to the East vs. West Cold War and presently envelope the North vs. South economic divide. With regard to the latter, present opposition to the draft OP seems, in part, to be informed by the implicit fear of imposing uncontrollable financial burdens upon individual states and the international community.
As will be elaborated upon *infra*, experiences with a wide range of international and domestic ESC rights complaint procedures indicates that there is no basis for fears that the draft OP will result in either an avalanche of complaints or burdensome international/state financial obligations. These fears are especially irrelevant with regard to the draft OP as Article 8 clearly

mandates that State parties retain the final decision as to the substantive measures enacted in response to any views proffered by the Committee on Economic, Social and Cultural Rights, (hereinafter the Committee), regarding the realisation of ESC rights.

II . (a) Complaints Submission on ESC Rights Violations: Current Practice

National and international precedents support the contention that it would neither be new nor innovative for the draft OP to provide for the submission of complaints addressing the violation of ESC rights. For example:

i)Within the Council of Europe, an Optional Protocol to the European Social Charter provides for collective complaints concerning the violation of ESC rights;

ii) Within the Inter-American System, the San Salvador Protocol provides for the submission of individual complaints to the Inter-American Commission and Inter-American Court with regard to trade union/association rights and the right to education;

iii) An Optional Protocol to the *Covenant* on the Elimination of Discrimination Against Women, (hereinafter CEDAW), entered into force on 22 December 2000. This device allows for an individual complaint procedure with respect to the civil, political, economic and cultural rights set forth in the said international instrument. Indeed, in the creation of this Optional Protocol the justiciability issue was debated by State parties however, it was ultimately held to be a non-issue.

iv) Reference to the national and judicial recognition of ESC rights in Mauritius, Colombia, South Africa, Canada, France, and India adds strength to the case for international justiciability of ESC rights through the draft OP.

Bearing the aforementioned in mind, it must be recognized that the draft OP would not create new obligations under the ICESCR, it would simply provide a new mechanism to bring about the substantive realization of the rights previously agreed to by the international community.

II. (b) Vagueness

The most legally technical argument against the international adjudication of ESC rights posits that these rights are vague norms containing unclear state obligations which would render their justiciability problematic.

Countering the normative vagueness argument is the fact that considerable efforts have been made by scholars and the Committee to clarify the content of ESC rights and the obligations they entail. Here, the content of certain rights, *i.e.* the right to food, the right to education, the right to adequate housing and the right to the highest attainable standard of health have been elaborated on through numerous academic studies, reports of independent experts and the General Comments of the Committee. Such clarifications have included:

i) a "minimum threshold" approach to the attainment of ESC rights. This approach aims at establishing a "bottom-line" beneath which concrete State compliance with ESC rights standards should not fall. Here, the minimum threshold is relative to national and or regional benchmarks and serves to assist in the formulation of State policy guidelines in securing domestic ICESCR compliance. The Committee introduced a similar

concept in its General Comment no. 3, namely "the minimum core obligation", being the obligation to ensure the satisfaction of, at the very least, minimum essential levels for each enshrined right;

ii) a typology for the fulfilment of ESC rights satisfaction has been developed in which States should "respect", "protect" and "fulfil" said rights. The obligation to respect requires the State to abstain from actions of commission or omission that violate the integrity of the individual, infringing on his or her freedom, including the freedom to use available material resources in the way the individual deems best to satisfy basic needs. The obligation to protect requires states to implement measures necessary to prevent other individuals or groups from violating the integrity, freedom of action, or other human right of the individual including the infringement on his or her material resources. Here, as far as ESC rights are concerned, States are required to protect individual freedom of action and the use of resources against other subjects. The obligation to fulfil requires the state to take measures necessary to ensure that each person within its jurisdiction is afforded the opportunity to obtain basic need satisfaction, as recognised in human rights instruments which cannot be secured through personal efforts. For example, with regard to the right to food, the obligation to fulfil implies both assistance in order to provide opportunities to obtain food and direct provisions of food or resources which can be accessed when no other possibility exists, due to e.g. unemployment, disadvantage or age, sudden crisis/disaster, or marginalisation. Finally, it must be recognised that, in evaluating individual States' progress towards the substantive fulfilment of *Covenant* based obligations, the Committee does take into account the means available to each state and in this regard accords states a certain "margin of discretion;"

iii) a detailed list of what constitutes violations of ESC rights through acts of commission or omission;

Within the aforementioned context, the draft OP would assist in clarifying the meaning behind and obligations concurrent with ESC rights and their realisation. Further, an international complaint procedure for ESC rights would offer the opportunity to build up a collection of relevant case law in which the justiciability and the content of the rights and state obligations could be further clarified. Finally the draft OP would also permit a more thorough understanding of ESC rights through the examination of specific cases.

III. The Positive and Negative Obligations Stemming From Political, Civil, Economic, Social and Cultural Rights

It is often claimed that ESC rights are "relative rights" with a variable situational content. As the realisation of said rights would require "positive" state action and resources, it is postulated that ESC rights enforcement costs would far exceed costs imposed for the implementation and maintenance of civil and political rights. It is thus often submitted that ESC rights' realisation could only occur progressively. Support for this notion is found in the contention that civil and political rights are absolute and fundamental with invariable content imposing negative state obligations that are satisfied relatively easily.

The above argument is countered by the fact that the implementation and maintenance civil and political rights does require positive state action. Indeed, the reality is that the full realisation of civil and political rights is heavily dependent both on the availability of resources and the development of necessary supportive state/societal structures. Here for example, the right to a

fair trial requires the establishment and maintenance of functioning judicial, law enforcement and penal systems. The European Court of Human Rights supported this contention when it clarified a number of positive state obligations attendant from the civil and political rights under the European *Covenant*. It is thus apparent that the difference in state obligations flowing from civil and political rights as opposed to ESC rights is more a matter of degree rather than a true difference in nature.

Support for the notion that civil and political rights are as "relative" as ESC rights comes from the fact that the scope and content of the former are not self-evident and continue to be the subject of serious interpretative efforts. For example, with regard to the civil and political right to be free from torture, inhumane and degrading treatment, a universally accepted definition regarding the scope and content of this supposed "absolute" right remains elusive.

RECOMMENDATION OF THE INTERNATIONAL COMMISSION OF JURISTS

In view of the growing support among governments and civil society for the adoption of the draft OP, the International Commission of Jurists recommends that further consideration of this international instrument take place through an inter-sessional open-ended Working Group of the Human Rights Commission.

APPENDIX "D"

OVERVIEW OF THE ANALYSIS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS BY THE COMMITTEE

The Obligation "To Take Steps" and "Progressive Achievement"

"undertakes to take steps . . . by all appropriate means, including particularly the adoption of legislative measures"

This article 2, paragraph 1, *Covenant* provision requires all States parties to take measures towards guaranteeing the full enjoyment of all *Covenant* rights for all individuals. The adoption of legislation will, in many cases, be indispensable. In addition the adoption of administrative, economic, financial, educational and social measures, the establishment of action programs, the creation of appropriate bodies and the establishment of judicial procedures may equally be necessary to secure ESC rights, (General Comment no. 3, § 4).

The requirement of "progressive achievement" reflects the fact that full realisation of all ESC rights will generally not be able to be achieved in a short period of time, (General Comment no. 3, § 9). The "progressive obligation" component of the *Covenant* does not mean that only once a State reaches a certain level of economic development must the rights established under the *Covenant* be realised. The duty in question obliges all States parties, notwithstanding their level of national wealth, to move towards the realisation of ESC rights. This clause should thus never be interpreted as allowing States to defer indefinitely efforts to ensure the enjoyment of the rights laid down in the *Covenant*. Certain obligations under the *Covenant* are intended to be implemented immediately. This would apply especially to *Covenant* non-discrimination provisions and the obligation of States parties to respect and protect ESC rights. For the "progressive realisation" of ESC rights, all existing resources must be devoted in the most effective way possible.

Minimum Core Obligation

The Committee has clarified that there is a "minimum core obligation" incumbent on each state to ensure the satisfaction of, at the very least, minimum essential levels for each *Covenant* right. Furthermore, in order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all available resources at its disposition in an effort to satisfy, as a matter of priority, said minimum obligations.

The Committee has also emphasised that severe resource constraints cannot justify taking no measures for the weakest groups in society. "[E]ven in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors, the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes." (General Comment no. 3, § 12).

Obligation to Respect, Protect and Fulfil

A typology for the fulfilment of ESC rights satisfaction has been developed in which States should "respect", "protect" and "fulfil" said rights.

The obligation to respect requires the State to abstain from actions preventing an individual from using available material resources in the way the individual deems best to satisfy basic needs.

The obligation to protect requires states to implement measures necessary to prevent other individuals or groups from violating the integrity, freedom of action, or other human right of the individual including the infringement on his or her material resources. Here, as far as ESC rights are concerned, States are required to protect individual freedom of action and the use of resources against other subjects.

The obligation to fulfil requires the state to take measures necessary to ensure that each person within its jurisdiction is afforded the opportunity to obtain basic need satisfaction, as recognised in human rights instruments which cannot be secured through personal efforts. For example, with regard to the right to food, the obligation to fulfil implies both assistance in order to provide opportunities to obtain food and direct provisions of food or resources which can be accessed when no other possibility exists, due to e.g. unemployment, disadvantage or age, sudden crisis/disaster, or marginalisation. Finally, it must be recognised that, in evaluating individual States' progress towards the substantive fulfilment of *Covenant* based obligations, the Committee does take into account the means available to each state and in this regard accords states a certain "margin of discretion."

As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations under the *Covenant*.

International Obligations

The question arises whether, apart from the domestic obligations accepted under the *Covenant*, article 2 includes international obligations for State parties, as it mentions that States take steps "individually and through international assistance and co-operation, especially economic and technical". In articles 11 (the right to an adequate standard of living and to the continuous improvement of living conditions), 22 and 23, mention is made again of international co-operation and international measures.

Although during the drafting process it was recognised that developing states would require some form of international assistance, no consensus was reached on the degree of responsibility developed countries would accept in providing such assistance. Therefore, from the *travaux préparatoires* it cannot be deduced that the commitment to international co-operation would imply a legally binding obligation upon States to provide any particular form of assistance.

The Committee has stressed that international co-operation for development and thus for the realisation of ESC rights is an obligation of all States and in particular, it is incumbent upon those States which are in a position to assist others in this regard. (General Comment no. 3, § 14). Here, when making an evaluation, the Committee takes into account the lack of state resources and international assistance/cooperation in support of realising ESC rights.

Non-discrimination and Equality

Non-discrimination and equality are integral elements of the *Covenant*. Article 2, paragraph 2, requires States parties to ensure the provision of judicial review and other recourse procedures should discrimination occur. This provision not only obliges Governments to desist from discriminatory behaviour and to alter laws and practices which allow discrimination, it also applies to the duty of States parties to prohibit private persons and bodies, (third parties), from practising discrimination in any field of public life. Importantly, the grounds of discrimination mentioned in this provision are not exhaustive and thus certain other forms of unfair discrimination negatively affecting the enjoyment of *Covenant* rights, (for instance, discrimination on the basis of sexual orientation), may also be prevented.

APPENDIX "E"

The Committee on Economic, Social and Cultural Rights: Progressing With State Parties Towards the Recognition of Economic, Social and Cultural Rights

Introduction

The primary function of the Committee on Economic, Social and Cultural Rights, (hereinafter the Committee), is to monitor the implementation of *the International Covenant on Economic, Social and Cultural Rights*, (hereinafter *Covenant*) by States. Here, the Committee strives to maintain a constructive dialogue and seeks to determine, through a variety of means, whether or not the norms contained in the *Covenant* are being adequately applied by States and how the implementation and enforcement of this instrument may be improved in order that all people can enjoy *Covenant* enshrined rights.

Drawing on the legal and practical expertise of its members, the Committee examines reports and submissions of States parties and, through concluding observations, provides suggestions and recommendations such that economic, social and cultural rights may be more effectively secured.

The following non-exhaustive examples illustrate the positive effect that both the *Covenant* and Committee suggestions and recommendations may have in influencing various States parties to practically implement their *Covenant*-based obligations.

Canada

In keeping with Committee recommendations, the Federal Government reinstated the Court Challenges Program which provides funding for Constitutional test cases promoting the rights of official language minorities and equality-seeking groups. See document no.: E/1994/104/Add.17, State Party Third Periodic Report: Canada, 20/01/98.

Cyprus

Most of the economic, social and cultural rights embodied in *Part II* of the *Covenant* are now safeguarded by the *Constitution of Cyprus*. Further, the *Covenant* forms part of the municipal law of Cyprus and has thus acquired superior force to any other municipal law. See document no.: E/1994/104/Add.12, State Party Third Periodic Report: Cyprus, 06/06/96.

Egypt

The Constitutional Court of Egypt invoked the provisions of the *Covenant* to acquit rail workers who were prosecuted for going on strike in 1986 and declared that the Penal Code should be amended to allow the right to strike. See document no.: E/C.12/1/Add.44, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Egypt, 23/05/2000.

Finland

In keeping with Committee recommendations, an important legislative initiative was introduced whereby provisions relating to principal economic, social and cultural rights were incorporated into the Constitution of Finland. In June 1999, these fundamental rights provisions were transferred nearly unaltered from the *Covenant* to the Constitution, becoming effective on 1 March 2000. See document no.: E/C.12/4/Add.1, State Party Fourth Periodic Report: Finland, 09/12/99.

Committee recommendations may have also assisted in ensuring that human rights issues are one of the standard subject matters in judges' further training courses which have included economic, social and cultural rights and the administration of justice. Further, in 1995, a separate fundamental rights and human rights section comprising the texts of the principal human rights agreements was included in the Laws of Finland. Prior to this innovation, international agreements ratified by Finland were published only in a separate Treaty Series of the Statute Book. Thanks to this change, it has become easier for both civil servants and lawyers to take note in their work of human rights agreements which are a part of legislation applied in Finland. See document no.: E/C.12/4/Add.1, State Party Fourth Periodic Report: Finland, 09/12/99.

Also in keeping with Committee recommendations, The Ministry of Labour has undertaken to develop the principle of gender mainstreaming in its own branch of the administration, particularly in its employment policy. The gender perspective is taken into account, for example, in the development of labour legislation, vocational guidance and projects related to the European Union (EU) structural funds. See document no.: E/C.12/4/Add.1, State Party Fourth Periodic Report: Finland, 09/12/99.

Finally, the Committee recommended that Finland consider the introduction of a general minimum wage system which would also cover employees who are not protected by collective agreements. In response, a Finish Tripartite Contracts of Employment Act Committee is currently preparing a proposal for a general reform of the *Contracts of Employment Act*. See document no.: E/C.12/4/Add.1, State Party Fourth Periodic Report: Finland, 09/12/99..

Germany

Germany is at present actively promoting economic, social and cultural rights both nationally and internationally through recent positive developments concerning said rights, such as: the March 2001 consultation organized by the State on the right to food; the State party's efforts at the United Nations Commission on Human Rights to establish the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living; and its revised and more favourable position on a draft Optional Protocol to the *Covenant*. See document no.: E/1994/104/Add.14, State Party Third Periodic Report: Germany, 17/10/96.

In keeping with Committee recommendations, departing from its previous practice, the Federal Government involved the NGO forum "World Summit for Social Development" in the preparation for its fourth periodic report to the Committee on the implementation of the *Covenant*. See document no.: E/1994/104/Add.14, State Party Third Periodic Report: Germany, 17/10/96.

Finally, the reintroduction of the continuation of full wage payments in the event of sickness announced in November 1998 is mentioned as a positive example of the new Federal

Government's policy to implement *Covenant* obligations. See document no.: E/1994/104/Add.14, State Party Third Periodic Report: Germany, 17/10/96.

Portugal

Portugal has extended efforts to implement Committee recommendations in particular through legislative measures to promote equality between men and women. See document no.: E/1990/6/Add.6, State Party Second Periodic Report: Portugal, 22/07/94.

Sweden

In its concluding observations the Committee expressed its concern over the problem of child pornography and the lack of information on this issue in Sweeden. It urged the government to intensify its efforts to combat child pornography and increase measures for monitoring and the registration of all such cases. It also referred to the need to ensure that appropriate penalties are imposed for such offences. Further to Committee recommendations, on 1 January 1999, new Swedish legislation extending criminal liability for association with child pornography came into force. Here, virtually all association with child pornography images, including possession, constitutes a criminal offence. The legislation applies to media of all kinds including the electronic environment. See document no.: E/C.12/4/Add.4, State Party Fourth Periodic Report: Sweden, 08/08/2000.

Tunisia

Many new laws and modifications of existing laws were inspired by the obligations assumed under the *Covenant* as the enshrined rights form part of Tunisian law by virtue of the Constitutional provision that an international treaty ratified by Tunisia becomes part of domestic law. See document no.: E/C.12/1/Add.36, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Tunisia, 14/05/99.

APPENDIX "F"

Committee for Economic, Social and Cultural Rights: Summary of General Comments One Through Fourteen

General Comment 1 - Reporting by States Parties - Part IV, ICESCR

General Comment 1 advises that the ICESCR State reporting obligations are designed to assist nations in fulfilling their *Covenant* obligations and to provide a basis on which *Covenant* compliance can be monitored in the aim of procuring the substantive fulfillment of economic, social and cultural rights, (hereinafter ESC rights). Further, State reporting mandates that comprehensive reviews are undertaken with respect to national legislation and administrative rules/procedures/practice. Coupled with the result of opening government ESC rights policies to public scrutiny, State reports should also provide a basis on which nations, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of *Covenant* obligations. This in turn will enable the aforementioned parties to facilitate an exchange of information so as to develop a better understanding of the individual domestic and common problems faced by States and measures that might promote ESC right realization.

General Comment 2 - International Technical Assistance Measures - Art. 22, ICESCR

General Comment 2 advises that article 22 of the ICESCR establishes a mechanism by which the Economic and Social Council may bring to the attention of relevant United Nations bodies, any matters arising out of State reports submitted under the *Covenant* "which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the ... *Covenant*" which could lead either to general or specific recommendations in addressing pertinent ESC rights realization issues. General Comment 2 thus recognizes that civil, political, economic, social and cultural rights are indivisible and interdependent and therefore efforts to promote one set of rights should also take full account of related human rights. Further, recognition is given to the importance of integrating human rights concerns into development activities and the intimate relationship that should be established between development activities and efforts to promote respect for human rights in general, and ESC rights in particular.

Comment 3 - The Nature of States Parties Obligations - Art. 2, ICESCR

General comment 3 advises that the *Covenant* provides for the progressive realization of ESC rights within the context of the constraints placed on States due to the limits of available resources. Despite these constraints however, the *Covenant* imposes various obligations which are of immediate effect to bring about ESC rights realization. Of these, two are of particular importance: the "undertaking to guarantee" that relevant rights "will be exercised without discrimination" and the undertaking in article 2(1) "to take steps". The concept of progressive realization is not to be misinterpreted as depriving *Covenant* obligations of all meaningful content as ESC rights realization objectives were designed to be flexible, reflecting the realities of the real world and attendant difficulties involved for countries in ensuring the full realization of said rights. The progressive realization concept thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Steps to bring about the full realization of ESC rights should be deliberate, concrete and targeted as clearly as possible

towards meeting the obligations recognized in the *Covenant*. States should use "all appropriate means, which include but are not limited to: the adoption of legislative measures; judicial remedies for ESC rights violations; and appropriate administrative, financial, educational and social measures. Finally, General Comment 3 advises that there exists a minimum core obligation for States to ensure the satisfaction of, at the very least, minimum essential levels of each *Covenant* right that should be achieved with individual state and international assistance and cooperation.

General Comment 4 - The Right to Adequate Housing - Art. 11(1), ICESCR

General Comment 4 advises that the human right to adequate housing, as derived from the right to an adequate standard of living, is of central importance for the enjoyment of all ESC rights and cannot be viewed in isolation from other human rights contained in the ICSECR, the ICCPR and other applicable international instruments. Here, the right to housing should not be interpreted in a narrow or restrictive sense but rather it should be seen as the right to live somewhere in security, peace and dignity, the concept of adequacy being particularly significant in relation to this right. Certain aspects of the right to housing that must be taken into account in any particular context are: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.

Regardless of the state of development of any given nation, General Comment 4 advises that certain immediate steps should be taken to promote the right to housing, the most important of which would require the abstention by Governments from certain negative housing practices. This abstention should be coupled with a commitment to the facilitation of self-help measures directed at social groups living in the most unfavourable conditions. The aforementioned will almost invariably require the adoption of a national housing strategy which "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals, the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of necessary measures". Within this, General Comment 4 advises that there exists a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of adequate housing incumbent upon every State and that this should be secured through individual state efforts and international cooperation.

General Comment 5 - Persons with Disabilities

General Comment 5 advises that *Covenant* provisions apply to persons with disabilities as this instrument applies fully to "all" members of society. The obligation of States towards this group is to take positive action to reduce public/private sector structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required. Methods to be used by States in seeking to implement their obligations under the *Covenant* towards persons with disabilities include: the need to ascertain, through regular monitoring, the nature and scope of the problems currently faced by persons with disabilities; the need to adopt appropriately tailored policies and programs to respond to the requirements thus identified; the need to legislate where necessary and to eliminate any existing discriminatory legislation; and the need to make appropriate budgetary provisions or, where necessary, seek international cooperation and assistance. Here, policy-making and program implementation should be undertaken on the basis of close consultation with, and the involvement of representative groups of the persons concerned. In the case of persons with

disabilities, everything possible should be done to enable such persons, when they so wish, to live with their families, maintain employment, obtain medical care/support services, have access to adequate food, accessible housing, basic material needs and the benefits of scientific progress and its applications.

General Comment 6 - The Economic, Social and Cultural Rights of Older Persons

General Comment 6 advises that the *Covenant* applies to the elderly through analogy with "the right of everyone to social security, including social insurance" and through the fact that the *Covenant's* provisions apply fully to "all" members of society. This General Comment notes that State parties to the *Covenant* are obligated to pay particular attention to the promotion and protection of the ESC rights of older persons as they are an extremely vulnerable group. The methods States are to employ in fulfilling the obligations they have assumed under the *Covenant* in respect of older persons are basically the same as those for the fulfillment of other obligations and include: the need to determine the nature and scope of the problems faced by the elderly through regular monitoring; the need to adopt properly designed policies and programs to meet targeted deficiencies; the need to enact legislation when necessary and to eliminate any discriminatory legislation; and the need to ensure the relevant budgetary support or, as appropriate, to request international cooperation. Finally, General Comment 6 advises that States must take appropriate steps to safeguard the rights of the aged to: employment and safe working conditions until their retirement; social security; family access and support; an adequate standard of living; access to proper medical care; education; and access the benefits of scientific progress and its applications.

General Comment 7 - The Right to Adequate Housing: Forced Evictions - Art. 11.1, ICESCR

General Comment 7 advises that forced evictions are *prima facie* incompatible with the *Covenant* as all persons should possess a degree of security of domicile tenure which guarantees legal protection against evictions, harassment and other threats. States must refrain from this practice and ensure that the law is enforced against agents or third parties who carry out forced evictions. Legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which provide the greatest possible security of tenure to occupiers of houses/land and are designed to strictly control the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Particular care should be taken with regard to women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups who all suffer disproportionately from the practice of forced evictions. Finally, where there are forced evictions which result in homelessness, General Comment 7 advises that States must take all appropriate measures, to the maximum of available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

General Comment 8 - The Relationship Between Economic Sanctions and Respect for Economic, Social and Cultural Rights

General Comment 8 recognizes that economic sanctions are being imposed with increasing frequency, both internationally, regionally and unilaterally. It advises that no matter the circumstances, such sanctions should always take full account of the provisions of the *Covenant*. In considering sanctions, it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country. General Comment 7 further advises that two sets of obligations flow from these considerations. First, the State affected by the imposition of sanctions must not nullify or diminish its relevant obligations under the *Covenant*. Second, the party or parties responsible for the imposition, maintenance or implementation of sanctions must take fully take ESC rights into account when designing an appropriate sanctions regime. Further, effective monitoring, which is always required under the terms of the *Covenant*, should be undertaken throughout the period that sanctions are in force. Finally, the sanction imposing body/bodies have an obligation "to take steps, individually and through international assistance and cooperation, especially economic and technical in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.

General Comment 9 - The Domestic Application of the Covenant

General Comment 9 advises that the central obligation in relation to the *Covenant* is for States parties to give effect to the rights recognized therein. By requiring Governments to do so "by all appropriate means", the *Covenant* adopts a broad and flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account. This flexibility however, coexists with the obligation upon each State party to use all means at its disposal to give effect to *Covenant* rights. Here, States should modify their domestic legal orders as necessary to both give effect to their treaty obligations and to provide effective domestic judicial remedies for violations of ESC rights. Whatever the preferred methodology for domestic implementation, several principles follow from the duty to give effect to the *Covenant* and must therefore be respected. First, the means of implementation chosen must be adequate to ensure fulfillment of *Covenant* obligations. Second, account should be taken of the means which have proved to be most effective in the country concerned in ensuring the protection of other human rights. Third, while the *Covenant* does not formally oblige States to incorporate its provisions in domestic law, such an approach is desirable.

General Comment 10 - The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights

Article 2, para. 1, of the *Covenant* obligates each State party "to take steps ... with a view to achieving progressively the full realization of the (*Covenant*) rights ... by all appropriate means". General Comment 10 advises that one of the means, through which important steps can be taken, is the work of national institutions for the promotion and protection of human rights. Here, it is acknowledged that national human rights institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. The types of activities that can be undertaken in relation to these rights are said to be: (a) the promotion of educational and information programs designed to enhance awareness and understanding of ESC rights; (b) the scrutinizing of existing laws and administrative acts, as well as draft Bills and

other proposals to ensure that they are consistent with the requirements of the *Covenant*; (c) the provision of technical advice; (d) the identification of national-level benchmarks against which the realization of *Covenant* obligations can be measured; (e) conducting research to ascertain the extent to which particular ESC rights are being realized, (f) monitoring compliance with specific *Covenant* rights; and (g) the examination of complaints alleging infringements of applicable ESC rights standards within States.

General Comment 11 - Plans of Action for Primary Education - Art. 14, ICESCR

Article 14 of the ICESCR requires each State party which has not been able to secure compulsory primary education, free of charge, to work out and adopt, within two years, a detailed plan of action for the progressive implementation, within a reasonable number of years of the principle of compulsory primary education free of charge for all. General Comment 11 deems this right as being one of vital. State plans to implement compulsory primary education, free of charge to all, must specifically set out a series of targeted implementation dates for exchange of the progressive implementation of the plan. This underscores both the importance and the relative inflexibility of the obligation in question.

International assistance and cooperation and action are of particular relevance in this situation as where a State party is clearly lacking the financial resources and/or expertise required to "work out and adopt a detailed plan, the international community has a clear obligation to assist.

General Comment 12 - The Right to Adequate Food - Art. 11, ICESCR

General Comment 12 affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels. The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or the means for its procurement. It shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and/or other specific nutrients. General Comment 12 proceeds to note that the right to adequate food will have to be realized progressively. This imposes an obligation to move as expeditiously as possible towards that goal. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger even in times of natural or other disasters. The core content of the right to adequate food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture and the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights. Appropriate institutional mechanisms should be devised to secure a representative process towards the formulation of a strategy, drawing on all available domestic expertise relevant to food and nutrition. The strategy should set out the responsibilities and time frame for the implementation of necessary measures and States should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food. Especially for this right, international assistance is a priority as States have a joint and individual responsibility to cooperate in providing assistance in accordance with ability.

General Comment 13 - The Right to Education - Art. 13 and Art. 14, ICESCR

General Comment 13 advises that education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. It plays a vital role in empowering women, safeguarding children from exploitative and/or hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. This said, the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence. While the precise and appropriate application of the terms will depend upon the conditions prevailing in each particular State, General Comment 13 advises that education in all its forms and at all levels should exhibit the following interrelated and essential features: availability; accessibility; acceptability; and adaptability. Here, the progressive introduction of free education means that while States must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education. Finally, the right to education can only be enjoyed if accompanied by the academic freedom of staff and students.

General Comment 14 - The Right to the Highest Attainable Standard of Health - Art. 12 ICESCR

General Comment 14 advises that health is a fundamental human right indispensable for the exercise of other human rights. The realization of the right to health may be pursued through numerous complementary approaches, such as the formulation of health policies, or the implementation of health programs developed by the World Health Organization, (WHO), or the adoption of specific legal instruments. Here, the right to health is closely related to and dependent upon the realization of other human rights. The notion of "the highest attainable standard of health takes into account both the individual's biological and socioeconomic preconditions and a State's available resources. General Comment 14 interprets the right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and drinkable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions and access to health-related education and information, including information on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.

The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in particular States: availability; accessibility; acceptability; and quality.

State parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind and the obligation to take steps towards full right realization. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health. Here, States have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the *Covenant*, including essential primary health care.

APPENDIX "G"

The Protection of Economic Social and Cultural Rights: South African Judicial Interpretations

Soobramoney v. *Minister of Health, KwaZulu-Natal*, 1997 (12) BCLR 1696 (CC)

Facts

Mr. Soobramoney suffered from diabetes, heart disease and chronic renal failure which necessitated regular medical/mechanical dialysis in order to prolong his life. Compelled to seek treatment for his incurable condition from a public hospital, the moving party's medical needs were refused as budgetary constraints forced the hospital to only provide dialysis treatments to individuals whose condition could be remedied in a short period of time. Against this, the appellant sought the intercession of the Constitutional Court asserting that his constitutionally guaranteed, s.11, right to life and, s.27(3), right to emergency medical treatment, had been violated.

Judgment

The key question appealed to the Constitutional Court was whether the constitutionally enshrined rights to life and emergency medical treatment placed a positive obligation on the State to provide same for the appellant. Here, the Court, per Chaskalson P., sympathised with Mr. Soobramoney's situation however, a "chronic lack of resources" was cited as support for the finding that there was no unqualified State obligation to meet the appellant's medical requirements. The Court thus held that as South Africa was experiencing a severe shortage of medical supplies and personnel, only immediate emergency treatment could be expected as of right.

Government of the Republic of South Africa v. *Grootboom*, 2000 (11) BCLR 1169 (CC)

Facts

Irene Grootboom was one of a group of 390 adults and 510 children living under appalling conditions in a South African shanty-town settlement. Illegally occupying land ear-marked for low-cost housing, the State forcibly evicted the "Grootboom group" and bulldozed their primitive domiciles. Prior to this, many of the inhabitants had applied for subsidised low-cost housing and had been on a waiting list for up to seven years. Petitioning the High Court, Irene Grootboom sought State supplied basic shelter on behalf of her 800 member squatter society basing her argument on South African constitutional rights, s.26(2), access to housing, and s.28(1)(c), a child's right to shelter.

Judgment

The key question appealed to the Constitutional Court was whether the constitutionally enshrined housing and shelter rights placed a positive obligation on the State to provide same for the petitioners. The facts of this case presented the Constitutional Court with a very difficult choice: to approve the illegal occupation of land by homeless people, or to ratify the inaction of the Government to deal with the issue of homelessness. On October 4, 2000 the Court per Yacoob J. held that the South African government was positively obliged to ameliorate the conditions faced by the Grootboom group through the provision of basic housing. This result was arrived at through the finding that State indigent population housing policies were unreasonable. In determining the 'reasonableness' of said policies, the Court decided that while limited State resources were an important factor, in the instant case the State had a duty to address the needs of the most vulnerable members of society. Thus, in the context of the right of access to housing, the Court held that State policy, in order to be reasonable, had to take account of the different socio-economic levels of the South African population and could not ignore those whose needs were most urgent. In conclusion, the Constitutional Court declared that the comprehensive housing programme called for by section 26(2) of the Constitution, had to include measures "to provide relief for people who have no access to land, no roof over their heads and who are living in intolerable conditions or crisis situations."

APPENDIX "H"

CONFERENCE PARTICIPANTS

Experts

Professor David Harris, University of Nottingham Faculty of Law, United Kingdom

Mr. Hatem Kotrane, Independent Expert on the ICESCR, appointed by the United Nations Commission on Human Rights

Professor Eibe Riedel, United Nations Office of the High Commissioner for Human Rights, Committee on Economic, Social and Cultural Rights

Mr. Philippe Texier, United Nations Committee on Economic, Social and Cultural Rights

State Representatives

Ms. Holla Bachtobji, Permanent Mission of Tunisia to the United Nations and other international organisations in Geneva

Mr. Mohamed Berrah, Permanent Mission of Algeria to the United Nations and other international organisations in Geneva

Ms. Deborah Chatsis, Permanent Mission of Canada to the United Nations and other international organisations in Geneva

Mr. Ignacio de Palacio Espana, Permanent Mission of Spain to the United Nations and other international organisations in Geneva

Mr. Robert Dieter, Permanent Mission of Germany to the United Nations and other international organisations in Geneva

Mr. Alexandre Pena Ghisleni, Permanent Mission of Brazil to the United Nations and other international organisations in Geneva

Minister Arturo Hernandez Basave, Permanent Mission of Mexico to the United Nations and other international organisations in Geneva

Ambassador Alexandre Kavsadze, Permanent Mission of the Republic of Georgia to the United Nations and other international organisations in Geneva

Mr. Vesna Kos, Permanent Mission of the Republic of Croatia to the United Nations and other international organisations in Geneva

Mr. Arto Kosonen, Ministry of Foreign Affairs of Finland

Ms. Susan Mc Crory, Permanent Mission of the United Kingdom to the United Nations and other international organisations in Geneva

Mr. Hervé Magro, Permanent Mission of France to the United Nations and other international organisations in Geneva

Mr. Luis Filipe Faro Ramos, Permanent Mission of Portugal to the United Nations and other international organisations in Geneva

Ms. Peter Rothen, Permanent Mission of Germany to the United Nations and other international organisations in Geneva

Ms. Ivana Schellongova, Permanent Mission of the Czech Republic to the United Nations and other international organisations in Geneva

Mr. Sergiusz Sidorowicz, Permanent Mission of the Republic of Poland to the United Nations and other international organisations in Geneva

Mr. José Valencia, Permanent Mission of Ecuador to the United Nations and other international organisations in Geneva

United Nations Office of the High Commissioner for Human Rights

Ms. Kitty Arambulo, United Nations Office of the High Commissioner for Human Rights

Ms. Dutima Bhagwandin, United Nations Office of the High Commissioner for Human Rights

Ms. Maria-Luisa Silva Mejias, United Nations Office of the High Commissioner for Human Rights

Non-Governmental Organisations attending as Observers

Ms. Danielle Babinault, Terre des Hommes, France

Ms. Marie-Thérese Bellamy, International Confederation of Free Trade Unions, Switzerland

Professor Berma Klein Goldewijk, Centre For Dignity and Rights International, Netherlands

Mr. Bruno Hérin, Terre des Hommes, France

Mr. Davinder Lamba, Mazingira Institute / Habitat International Coalition, Kenya

Malcolm Langford, Centre on Housing Rights and Evictions, Switzerland

Mr. Mikel Mancisidor, Paz y Tercer Mundo, Spain

Mr. Benoit Narbey, International Federation for Human Rights, Switzerland

International Commission of Jurists

Mr. Adrian Arena
Mr. Edwin Berry
Ms. Louise Doswald-Beck

Representatives from the following invited States were unable to attend the roundtable:

Chile; India; Mauritius; Netherlands; Peoples Republic of China, Philippines; Republic of Kenya; Republic of Senegal; Republic of Uruguay; Russian Federation; South Africa; Thailand.

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